

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on March 12, 2003 at 3:00 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Tim Dowell (D)
Rep. Hal Jacobson (D)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: Rep. Daniel Fuchs (R), Rep. Jeff Laszloffy (R)

Members Absent: None

Note: Reps. Carney, Dowell, Fuchs, Olson, and Shockley were absent during Executive Action.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 277, 3/10/2003; SB132,
3/10/2003; SB173, 3/10/2003; SB
198, 3/10/2003
Executive Action: SB 132; SB 173

HEARING ON SB 277

Sponsor: SENATOR AUBYN CURTISS, SD 41

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 2 - 3.8}

SEN. CURTISS said that she presented this bill on behalf of her constituents who feel harassed and sometimes threatened by telemarketing phone calls that result in hang ups. She said there would be one amendment that accommodates the emergency management people. She distributed written amendments. She urged the committee to think about elderly people who have a hard time getting to the phone only to find no one there.

EXHIBIT (feh52a01)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.8 - 10.8}

Jim Kembel, Montana Association of Chiefs of Police (MACOP), said that they appreciate SEN. CURTISS for working with them on this bill. He agreed with the amendment in Exhibit 1.

Cort Jensen, Montana Office of Consumer Protection, said that his office would be in charge of enforcing this provision. He said that they support this bill.

Brad Griffin, Montana Retail Association, said that he is a proponent of this bill. He distributed some proposed amendments to accommodate retailers who have had a business relationship with the person being called during the preceding 18 months.

EXHIBIT (feh52a02)

John Shontz, Montana Newspaper Association, agrees with this bill with the amendments proposed by Mr. Griffin.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 10.8 - 15.9}

Ross Canon, Direct Marketing Association, said that there are six other bills that are similar to this one. They do not oppose "do not call" bills. They suggest that all of these bills are gathered together so the proponents, opponents and informational

witnesses can work together to come up with a workable solution to satisfy everyone's needs.

Cory Swanson, AT & T, said that they would like to see some minor changes to this bill. He said that they know there will be some kind of telemarketing bill that will come out of this session. They would like to see a distinction between the automatic dialing announcing device and the other similar dialing devices. The automatic dialing announcing device has an automatic dialer with a prerecorded message. The other devices are mechanical or computer-assisted way of dialing numbers quicker. These may be used by nonprofit organizations. Therefore, the only change that they would suggest to this bill is on Page 1, Line 20, to strike "predictive dialing devices, or similar device."

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 15.9 - 22.1}

REP. MENDENHALL asked how this bill would affect the use of prerecorded messages used during election campaigns.

Mr. Jensen said that Montana already has a ban on prerecorded messages. However, the Supreme Court has ruled that prerecorded messages of a political speech or messages cannot be banned. The use of a computerized system to dial people, however, can be banned.

REP. MENDENHALL asked Mr. Jensen if his office would be in charge of enforcement and what the penalties would be.

Mr. Jensen said that his office would be the enforcers. The standard penalties for telemarketing violations can be \$10,000 plus an additional \$300 per call and the potential of being sued for up to \$500 per call.

REP. MATTHEWS asked Mr. Jensen if he has been following all of the telemarketing bills this session.

Mr. Jensen said, "Yes."

REP. MATTHEWS asked about the amendments proposed for this bill.

Mr. Jensen said that at least one bill on each side of the House has been modified to have the 18-month provision. The federal law makes the 18 months a federal standard.

REP. BROWN asked what happens if Montana is stricter than the federal law.

Mr. Jensen said that both the Federal Trade Commission and the Federal Communication Commission have rules on telemarketing and telemarketing devices. Both sets of rules clearly state that they will not preempt state law providing the state is as strict as they are. If the state law is less strict, the federal law preempts it. If the state law is so restrictive that it destroys state commerce, the federal law will then preempt state law.

REP. JACOBSON asked Mr. Canon what his concerns were with this bill.

Mr. Canon said that it would be good to have one single set of telemarketing laws nationwide. They feel it would be ideal if state regulations were as close to federal regulations as possible.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 22.1 - 26.3}

SEN. CURTISS said that this bill covers those people who don't know that they need to put their name on a "do not call" list. She said this is a simple and direct way to solve the problem. She said that **REP. BROWN** would probably carry this bill in the House.

REP. BROWN concurred that she would be happy to carry the bill in the House.

Mary Vandenbosch, Legislative Staff Person, said that there are conflicting or duplicate bills that will need to be dealt with in this committee. She distributed some suggested options and a comparison of the telemarketing bills.

EXHIBIT (feh52a03)

Mr. Jensen said that when he was at the Senate hearing on HB 424, **SEN. JOHNSON** was interested in the committee forming a joint subcommittee to deal with unifying these bills into one bill.

CHAIRMAN BITNEY said that they would consider that.

HEARING ON SB 173

Sponsor: SENATOR WALTER L. MCNUTT, SD 50

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 26.3 - 30}

SEN. MCNUTT said that in 1996 there was a Federal Telecommunications Act which was to guarantee all Americans reasonable telephone rates. Part of the act was to have a joint board between the Federal Communications Commission (FCC) and the Public Service Commission (PSC) to determine where the Universal Systems Funds were eligible to be spent. The PSC was left out of the Statute as the other partner in developing the rules and programs for where these funds will be spent. This bill will correct that oversight.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.8}

Mike Strand, CEO, Montana Independent Telecommunications Systems, said that SB 173 is a cleanup bill. The issue involves the Universal Service Fund which is distributed to rural telephone companies to keep rates in rural areas comparable to rates in urban areas. Under current statute, the FCC could change service area boundaries without consulting with the PSC. Senate Bill 173 will correct this problem.

Geoff Feiss, General Manager, Montana Telecommunication Association, said that he agreed with Mr. Strand and supports SB 173.

Greg Jergeson, Public Service Commission District 1, said that the PSC supports this bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 3.8 - 5.3}

REP. MATTHEWS asked about telecommunication carriers.

Mr. Jergeson said that all rural carriers in Montana are eligible for purposes to receive benefits from the Universal Benefits Fund.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 5.3 - 5.8}

SEN. MCNUTT said that this is a housekeeping and would like to get it back into the statute. He said that REP. OLSON will carry this bill in the House.

HEARING ON SB 132

Sponsor: SENATOR WALTER L. MCNUTT, SD 50

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 5.8 - 7.3}

SEN. MCNUTT said that this bill was requested by the Department of Administration's group that handles 911 and enhanced 911 service. He provided a written copy of his testimony.

EXHIBIT(feh52a04)

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 7.3 - 10.5}

Jeff Brant, Deputy Chief Information Officer, Information Technology Service Division, Department of Administration, provided a written copy of his testimony.

EXHIBIT(feh52a05)

Mike Strand, CEO, Montana Independent Telecommunications Systems, said that he is a member of the 911 Advisory Council. He is in support of this bill.

Geoff Feiss, General Manager, Montana Telecommunications Association, said that they support this bill.

Aimee Grmoljez, Verizon Wireless, said that they are in support of this bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 10.5 - 12}

SEN. MCNUTT said that this is a housekeeping bill and recommend a do pass. He said that REP. OLSON has agreed to carry this bill in the House.

EXECUTIVE ACTION ON SB 132

{Tape: 1; Side: B; Approx. Time Counter: 12 - 13.3}

Motion/Vote: REP. JACOBSON moved that SB 132 BE CONCURRED IN. Motion carried unanimously 14-0 by voice vote. REPS. CARNEY, DOWELL, FUCHS, LASZLOFFY, OLSON and SHOCKLEY voted by proxy.

Motion/Vote: REP. MENDENHALL moved SB 132 BE PLACED ON THE CONSENT CALENDAR without objection.

EXECUTIVE ACTION ON SB 173

{Tape: 1; Side: B; Approx. Time Counter: 13.3 - 15.2}

Motion/Vote: REP. MENDENHALL moved that SB 173 BE CONCURRED IN. Motion carried unanimously 14-0 by voice vote. REPS. CARNEY, DOWELL, FUCHS, LASZLOFFY, OLSON and SHOCKLEY voted by proxy.

Motion/Vote: REP. MENDENHALL moved SB 173 BE PLACED ON THE CONSENT CALENDAR without objection.

HEARING ON SB 198

Sponsor: SENATOR EMILY STONINGTON, SD 15

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 15.2 - 18.6}

SEN. STONINGTON said that this bill allows for small counties to have a say where cell towers are placed. The wireless companies were in strong opposition to this bill and amended in the Senate Business and Labor Committee. The counties were not happy with the amendments that were placed on the bill and passed out of the Senate. She provided amendments that bring the bill back to its original state.

EXHIBIT (feh52a06)

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 18.6 - Tape: 2; Side A; 5.2}

Gordon Morris, Montana Association of Counties (MACo), provided a copy of a resolution provided by the Association of Counties and a copy of the original introduced bill. He said that the bill was gutted by the amendments that were passed in the Senate. He said that he would amend the bill to put it back to how it was originally.

EXHIBIT (feh52a07)

EXHIBIT (feh52a08)

Mona Jamison, Gallatin County, said that they urge support of the amendments that were distributed. The amendments make it clear that the local authorities cannot prevent companies from coming in. The amendments provide for the public safety and welfare of Montana citizens without discrimination among the carriers. The amendments state that a permit is necessary. County government can adopt reasonable fees to underwrite the costs so this is not an unfunded mandate.

Opponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 5.2 - 16.6}

Aimee Grmoljez, Verizon Wireless, said that they oppose this bill with the amendments proposed by the proponents. The amendments are vague in many areas.

Geoff Feiss, General Manager, Montana Telecommunication Association, said that they oppose the bill with amendments.

They feel this bill is "a solution in search of a problem." He said that customers are continuously asking for expanded coverage but resist the building of towers. The Federal Law requires wireless carriers to apply with the Federal Aviation Association (FAA) before locating a tower anywhere. The FAA notifies the state and local governments. No one can build a tower before the FAA has approved it. The FAA also notifies the Civil Aeronautics Board. The process of applying for a permit to build a tower is already burdensome. If this bill, with the amendments, is passed it will place another layer of regulation. Towers are not built without clearance from federal and state officials.

Mike Strand, CEO, Montana Telecommunication Systems, said that they agree with Mr. Feiss in opposition of this bill.

Phil Maxwell, Three Rivers Communication, said that they oppose this bill. They see no need for added regulation.

Rick Hays, Qwest and Qwest Wireless, said that they rise in opposition of this bill. He said that he feels that they work with the counties prior to placing a tower. He explained that it took over a year to put a tower in Valley County. They don't see the need for this piece of legislation.

Margaret Morgan, Western Wireless/Cellular One, said that for all of the prior reasons stated, they oppose this bill.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 16.6 - Tape: 2; Side B; 4.0}

REP. JACOBSON asked Mr. Morris what the County Commissioner's particular concerns were.

Mr. Morris referred him to Resolution 2002-1 (Exhibit 7). He said they just want to be included in the loop prior to construction of towers.

REP. JACOBSON asked Mr. Feiss to give a general description of the size of the towers.

Mr. Feiss said that the towers vary in height from 60 feet to over 100 or 200 feet. Some carriers can share the same towers. Most are built to collapse in on themselves. They are built with safety precautions.

REP. JACOBSON asked if there was an avenue for public hearing or notification.

Mr. Feiss said that the FAA process is a long and detailed process. The FAA notifies the Civil Aeronautics and local authorities.

REP. JACOBSON asked about public notification.

Mr. Feiss said that they go through all of the regulatory requirements before placing a tower. He said he is not sure of how much public notice they give.

REP. JACOBSON redirected the question to Mr. Morris.

Mr. Morris said that outside of the federal requirement, there is no notification. The bill is intended to give counties the regulatory authority for siting on non-federal property.

REP. RICE asked Mr. Maxwell about the situation where a tower was placed too close to an airport in Twin Bridges and, therefore, the airport lost funding.

Mr. Maxwell said that the tower in Twin Bridges is two miles from the airport. It is 200 feet in height and has been approved by the FAA. He was not aware of lost funding.

REP. BROWN asked Mr. Morris if the standard height of the towers can range from 60 to 100 feet.

Mr. Morris said that the previous person indicated that there was a tower that was 200 feet. In the amendment, they offered to limit the number of feet before they are required get a permit.

REP. BROWN asked Mr. Morris to explain the definition of a "view shed."

Mr. Morris said that a "view shed" is what a person sees when they look out of their window.

REP. BROWN asked if the MACo would have been against building the Hungry Horse dam 50 years ago.

Mr. Morris said that it is a problem with towers.

REP. BROWN asked if MACo was, in fact, trying to zone without zoning in place.

Mr. Morris said that if they can zone now, they can regulate under zoning laws. With the absence of zoning they do not have the authority.

REP. DOWELL asked if it was possible to put cell towers near radio towers.

Mr. Feiss said that federal rules account for radio frequency interference. There is an interference issue.

CHAIRMAN BITNEY asked Mr. Feiss if they would accept the bill without the amendments.

Mr. Feiss said that even without the amendments it is nearly acceptable but they still disagree with parts of the bill as it was amended in the Senate.

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 4 - 6}

SEN. STONINGTON said that this is a tough issue. She said that MACo feels that without the amendments back on the bill, they would rather the bill be tabled. That is the decision that this committee needs to make. This only pertains to towers that exceed 60 feet. Normal towers are about 40 feet. She said that, on the first page of the amendments, they did not intend to have "or modifications." They only want the counties to have some say in the original placement of a cell tower in excess of 60 feet. The counties are also interested in knowing what happens when a tower is abandoned. She distributed a letter from Mary Sexton of Teton County.

EXHIBIT (feh52a09)

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

March 12, 2003

PAGE 12 of 12

ADJOURNMENT

Adjournment: 4:30 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT (feh52aad)